File No FD 132 CSL 72 (~~P-E~~)

MYSORE GOVERNMENT SECRETARIAT

Notes Correspondence/Collection

Department FINANCE Section CT

Subject :— Waiver of 75% of tax for the period from 1-10-57 to 1-1-1959 - Petition from the President, Copra Merchants Association, Tiptur

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Earlier References :—

Late References :— P-30 /E

(Classification ~~A/B~~/C) 2

Notes Pages 16

Correspondence Pages 14

Fo·/Not for section Note Book

To be destroyed after 1988

Under Secretary to Government.

DOCKET SHEET

Department: Finance

File No. FD 132 CSL 7 (P.F.)

Section C.T.

Volume:

SUBJECT

Waiver of 75% of tax for the period from 1.10.73 to 1.1.1974 - petition from the President Cochin Merchants Association, Tripture - reg..

Number and date 1	To whom sent 2	Instructions 3
FD 646/DS(CT)73 28.6.73.		
FS 2287/73 27.8.73		
2586 28.9.73		
1014 DF 73 28.9.73.		

[illegible]

3461 Sr. No. 1 : Petition from the President Copra Merchants Association, Tiptur

3529 Sr. No. 2 : — do —

1. The file and the subject mfg. FD 132 CSL 72 wherein C.C.T.U report received under this letter No. MSA/HC/1/71-72 was worked upon, has been submitted to D.S. on 18.9.1972 as per movement of the file register. P.A. to D.S. may be requested to indicate further movement of the file

27/6 27/6

Seen
27.6.73

Processed

2. Pl. check up if this is pending in FMS office. The file was with FS when this question was discussed with FM. One of the files connected with payment in instalments was returned to the section with orders the other file has not been returned yet.

28/6

DS(CT) 29.6

2

F.D.(C.C.T.)

3 File No. FD 67 CSL 72 regarding grant of instalments for payment of C.S.T. prior to 10-12-64 has been received back. The file regarding waiver of penalty viz FD 132 CSL 72 has not been received back. P.S. to F.M. may be requested to see whether that file is still with F.M.

5/7 5/7 Asst. 31 D.C.73 7.7.73.

(cc) 5.7.73.

P.S. to F.M.

4. The above file is not with the F.M. The same appears to have been returned to Section long back.

N. VENKOBA RAO 9/

9/5 F.A. (CT)

9 15.7.73

F.D.(C.C.T.)

5. Since the file is not with the F.M P.A. to F.S. may perhaps be requested to indicate the movement of the file No. FD 132 CSL 72. in view of what has been stated by D.S. in para 2 of F.

20/7 20/7

(cc) 21.7.73.

(6.) Mr Nagaraj

Pl. check up.

It appears the file returned to Section long back after taking F.M's orders.

21/7/73

7. File No. FD 132 CSL 72 was submitted to D.S. on 18.9.72. Further movement of the files are not traceable. The file is stated to have been returned by F.M. and F.C.L but no date has been indicated. The same has not been received by the Section.

8. In the circumstances further action in the matter is forwarded.

26/7

9. It may be necessary to get at the hard papers. Some efforts may be made to trace the papers in the formal establishments of DSCM), FC, and FM. In case they prove unfruitful action may have to be taken to recruited the papers by collecting copies of correspondence from the Office of the C.C.T.

28.7.73.

10. File No. FD 132 CSL 72 which was submitted to D.S. on 18.9.1972 is neither with F.M. nor with F.C. P.A. to D.S. may therefore be requested to indicate the date on which the file was submitted to F.S. so as to enable this Section to verify further movements of the file in F.C's office.

30/7

PS to DS(M)

31.7.73.

The file connected with the representation of the Tiptur coconut and copra merchants is not traceable. However copies of the entire correspondence in this connection have been obtained from the CCT's office and may be seen at pp. 5 to 11.

The representation is to the effect that the concession of waiver of 75% of purchase tax payable by cotton and ground-nut dealers in the Bombay Karnataka area for the period 1.10.57 to 1.1.59 should be extended to the petitioners also. The CCT has given a detailed note on the representation at pp. 7 to 9. 12

For a proper appreciation of the request made by the petitioners, it would be necessary to examine the background against which concessions were extended to the cotton and groundnut dealers in the Bombay-Karnataka area ~~s. 14~~ S. 5(4) of the 13

MST Act prescribes through the fourth schedule the point and rate of tax for goods declared to be of special importance for inter-state trade or commerce under S. 14 of the CST Act. Under the proviso to ~~this~~ S. 5 (4) of the MST Act 1957 which was brought into force from 1.10.57 it was "provided that no tax shall be levied in respect of the last purchase inside the state, if the said goods are intended for sale in the course of inter-state trade or commerce". Due to a misinterpretation of this proviso dealers of the Bombay-Karnataka area thought that they were not liable to pay purchase tax under S. 5(4) on cotton and groundnut purchased by them from registered dealers and subsequently despatched outside the State on commission basis. The High Court in its decision in "Nattumal Gangaji vs State of Mysore however gave an authoritative decision that the dealers would have to pay the tax in such cases. Despite this judgement, the recovery ~~of~~ the dealers in groundnut ~~etc~~

were however
of purchase tax could not be enforced because of the decision of the High Court in the case of "Malaraffa & Sons vs. the State". which dealt with the ambit of tax powers under S.7 of the MST Act. This provision, as worded at that time laid down at that time that "the provisions of this Act relating to taxation on sales or purchase inside the State only at single point or only at one or more stages apply only to sales within the State". The underlined portion of this section was substituted by the words "apply to sales or purchases within the State" by an amendment which came into force from 1.1.59. The H.C. held that as this amendment was not given retrospective effect, no tax on purchases could be levied up to 1.1.59. As a consequence of this decision, the taxes already recovered on such purchases had to be refunded and it was not possible to enforce recovery of the tax found

leviable in Nathumal Bonaji's case

14: to the clear intention of the legislature was that purchase tax should be levied and as heavy refunds would have been necessitated by the HC judgement in Mallarappa's case, an amendment was introduced in 1971 giving retrospective effect from 1.10.59 to the amendment to S.7. While clearing this amendment, the Select Committee referred to Government's assurance that cases of hardship would be considered sympathetically and that Government would exercise the powers available to them to treat such cases favourably In the light of this assurance, the Government Cabinet approved the exemption of 75% of the tax and recovery of only 25% in individual cases of hardship which were referred to Govt. The Cabinet also approved accepted the following principles inter alia for consideration of such cases -

i) Dealers who had specifically included the element of purchase tax payable in the price structure and thus made provision

discharging the liability and those who had paid the purchase tax accepting the liability would not qualify for any relief.

ii) the relief might be granted by Govement in individual cases, in exercise of their inherent powers and not in any statutory proceeding under the Act such as assessment, appeal, revision petition or suo-motu revision.

As LD had cited a decision of the Supreme Court in which the Court had taken exception to certain instructions issued by the Govt. of Assam which were not in consonance with the provisions of law, the decision of the Cabinet was communicated to the CCT by means of a confidential letter requesting him to forward manorial cases of "hardship". In his remarks (vide F/A - file FD 269 CBL 62) As mentioned by the CCT, the benefit was availed of by most of the

dealers in Belgaum and some dealers in Davangere.

15 The coconut and copra merchants of Jiplur have represented that 75% of the purchase tax payable by them for the period 1.10.57 to 31.12.58 may similarly be waived. The following points may have to be considered while taking a decision on the present representation -

i) The formal incidence of sales or purchase tax falls on the dealer at the specified stage regardless of whether he collects it from the buyer. Legally, by virtue of the retrospective effect given to ~~S.7~~ the amendment to S.7, the dealers ~~who~~ is, in this class of cases, are liable to pay purchase tax and the question of whether they included the tax element in their sale price is immaterial

ii) The relief has so far been restricted only to dealers in goods which were "declared goods" between 1.10.57 and 1.12.58. Cotton and copra were not declared goods during this

period. As pointed out by the CCT such relief is extended to these dealers also, representations will come in from other dealers who feel that they are similarly placed. There were thirteen items in the Third Schedule during 1.10.57 to 31.12.58 and it is likely that dealers in these items during the above period would also file representations.

iii) As pointed out by the CCT it would be difficult in practice to ascertain whether dealers have included any element of purchase tax in their sale price for determining whether "hardship" has been caused the only distinction which will be made in practice is between those who have paid the tax (who would not be eligible for the benefit) and those who have not paid (who would be eligible) we would therefore be discriminating against those who have complied with the law and who have paid the tax due from them

iv) The concessions asked for are extra statutory and will be objected to in audit.

v) The writ petitions filed by these dealers have been dismissed.

In the circumstances it is for orders whether the benefit of the Cabinet decision with regard to the waiver of 75% of purchase tax for the period 1.10.57 to 31.12.58 in cases where "hardship" would be caused if recovery is enforced, should be extended to the present petitioners also.

27/8.

F.C)

The main argument of the merchants of Tiptur is that this concession was extended to the merchants of North Kanatak, dealing in groundnut & cotton. As the implications are not clear, a meeting may be fixed to which Commr of Commercial Taxes may be called. We may have this on 10th Sept at 11 AM.

Recd 2/9 K. issue meeting notice - put up the file again 4/9

xxx

DS (FM) Secretary (CD) 31/8

12

MYSORE GOVERNMENT SECRETARIAT

C.C.T. informed me that he would be on C.A. on 10th Septr. 73. As both F.C. & C.C.T. are free on 12th inst., the meeting re: waiver of 75% S.T. on aspra may please be fixed at 4 P.M. on that day viz 12th Septr. 1973.

4/9/73 US(CT) 6.9.73.

20 Draft letter as pour-up

5/9

5/9

5-9-73

21. These papers deal with the representation of Copra Merchants of Tiptur for waiver of 75% of the Purchase Tax due for the period from 1-10-1957 to 1-1-1959. The representation is made on the ground that a similar concession was shown to the dealers in cotton and groundnut of the Bombay Karnatak area.

22. The note furnished by CCT at pages 7 to 9 c.f. explains the background of the case. Briefly, the position is that under the Mysore Sales Tax Act, 1957, groundnut and cotton were included in the Fourth Schedule, i.e. declared goods covered by the Central Sales Tax Act, while coconut and copra had been included in the Third Schedule, i.e. goods subject to State Sales Tax at the point of purchase. According to Section 5(4) of the Mysore Sales Tax Act, as it then stood, Sales Tax was leviable on declared goods at the point of last purchase, but tax was not leviable if the goods were intended for sale in the course of inter-State trade. On a representation made by some dealers of Ranebannur in regard to cotton and groundnut purchased by them and despatched on consignment basis to dealers outside the State, the Department of Commercial Taxes gave an incorrect interpretation which led the dealers to believe that they need not collect Purchase Tax. This happened in 1957. Subsequently, the matter went to court and in 1962, the High Court gave a decision that tax is liable to be paid in such cases. It may be noted that the High Court decision applied to groundnut and cotton, which were declared goods.

23. Separately, and unconnected with these proceedings, a dealer in wool, which was then included in the Third Schedule (like coconut and copra), had challenged the levy of Purchase Tax on him, on the ground that Section-7, as it then stood did not permit such a levy. The ground for questioning the levy was that with effect from 1-1-1959, Section-7 was amended to include 'sales or purchases', whereas the original clause referred to sales only. The High Court upheld the contention of the wool dealer, as a consequence of which, tax would not be leviable upto 1-1-1959.

24. The result of this second decision was that not only was tax found to be not leviable on goods in the Third Schedule, but it nullified even the other High Court decision referred to in the previous para, regarding declared goods. The State was, therefore, faced with a situation of refunding large sums of money.

25. In order to get over the situation, the Mysore Sales Tax (Amendment) Bill, 1962, was moved to amend Section-7 with retrospective effect. When the Bill was referred to the Select Committee, a lot of representations were made by the cotton and groundnut interests of North Karnatak area that as the dealers had not actually collected the tax (on account of the incorrect interpretation given by the Department), it would create hardship for them if they were now to be asked to pay the tax from their own pockets. Government gave an assurance that cases of hardship arising out of the retrospective levy would be considered sympathetica and necessary relief provided.

PTO

24

26. Subsequently, the Amendment Act was passed giving retrospective effect to the levy for the period from 1-10-1957 to 31-12-1958. Cabinet considered the question of giving relief, and it was decided that individual cases would be considered and exemption would be granted upto 75%, recovering only 25%. This benefit was availed of by the groundnut and cotton dealers of North Karnatak area and some dealers of Davanagere also.

27. It is on this analogy that the copra merchants of Tiptur are also urging for waiver to the extent of 75%. As mentioned earlier, the cases of coconut and copra dealers are distinguishable from those of groundnut and cotton merchants, for the following reasons:

(a) while groundnut and cotton were declared goods, coconut and copra were not; and

(b) the dealers in groundnut and cotton had a legitimate ground for not collecting the tax, since they acted in accordance with an incorrect interpretation given by the Department of Commercial Taxes.

28. However, there is one other aspect which is relevant. Even under the Mysore Sales Tax Act of 1957, oil seeds had been included in the Fourth Schedule as declared goods. But somehow, coconut and copra were included in the Third Schedule. Some of the dealers of Tumkur had gone to the High Court on the ground that coconut and copra were also oil seeds and should be deemed to be declared goods. It may be noted here that Section-15 of the Central Sales Act, which restricts the power of the State to levy Sales Tax on declared goods, came into force from 1-10-1958. During the proceedings before the High Court, Government filed a memo stating that even though coconut and copra had not been included in the Fourth Schedule, they had to be deemed to be declared goods, and accordingly, for the period from 1-10-1958 to 31-12-1958, Government conceded that Purchase Tax was not leviable.

29. This left only the period from 1-10-1957 to 30-9-1958, during which period Purchase Tax on coconut and copra could be levied. Steps were then taken to effect recoveries, and since then the merchants of Tiptur have been repeatedly pressing for similar concessions being shown to them as to the cotton and groundnut merchants of North Karnatak. Similar representations were made by Arecanut merchants of Mangalore. This had been rejected, but the Tiptur merchants have once again made a representation. CCT has reported that the total amount involved is Rs.1.2 lakhs and has recommended that the waiver of 75% may be extended to them also.

30. Shri Gangadharappa, President, Copra Merchants Association, Tiptur (who is the signatory to the application) and Shri Srinivasan, Advocate, met me and the Commissioner of Commercial Taxes today. The main point urged by Shri Srinivasan, was that the assurance of Government (vide para 25 above) was given in 1962 prior to the High Court decision on the interpretation of Section 5(4)

Cont..

From pre-page:

In other words, it was given in the context of the decision of the High Court on Section 7 only, viz.' in regard to levy of Purchase Tax and that it had application to all types of dealers who were liable to Purchase Tax at that time. That is to say, the assurance was definitely applicable to the Copra dealers also.'

31.' Factually, what Shri Srinivasan stated is correct.' The Mysore Sales Tax (Amendment) Bill, 1962, was taken up because of the difficulty caused by the interpretation of Section 7 holding that it did not permit levy of Purchase Tax.' This means, that the benefit of assurance given by Government, if extended to the Copra dealers of Tiptur could also be claimed, by other dealers placed in a similar position. Earlier, applications for waiver to the tune of Rs.6.8 lakhs had been received from Arcanut Merchants of Mangalore, which had also been turned down along with those of Copra Merchants of Tiptur. Morally, if we concede the case of Tiptur Merchants and their counterparts in Mangalore reagitate, we may find it hard not to agree.' At the same time, the fact is that while the Tiptur Merchants have been pressing repeatedly, none others are doing so.' We could perhaps make a distinction in their case on the ground referred to in para-28, viz. that Copra and Coconut, being oilseeds, had virtually been accepted as declared goods, and that, on the analogy of the Cotton and Groundnut merchants of North Karnatak, they should be allowed the waiver of 75 per cent.

32. If approved, orders will be issued waiving 75 per cent of the tax due for the period from 1-10-1957 to 30-9-1958 from the Copra Merchants of Tiptur.' The amount involved, as mentioned earlier, is Rs.1.2 lakhs.

(TR Satish Chandran)
Financial Commissioner.
27-9-1973

33| F.C. to discuss

FS/75/74
9.1.74

M. 29/1/SHORPADE,
Minister for Finance.

34| FC) This was discussed today with FM when DS(r) and the Secretary, CTO (Head office) were present. FM approved the proposal in para 32. Issue letter to CCT.

35| Dy. Secy. F.D. No 150 Date 9/1/74. DS(r) Put up draft letter to CCT. 9/1 9.1.74.

16/36 D... letter is put up for approval.
[illegible]
Sd/10/1

Sd/
11.1.74

FD/DS/ISD/74:

Approved.
Sd/-
18.1.74

(S(ET))

Issued 22-1-74. This may be recorded as CF
Sd/23/1
2/2/1

XXXXXXXKARNATAKA

FD 132 CSL 72. KARNATAKA.
XXXXX

22nd Jan. 74.

xxxxxKarnataka,
Finance Department.

The Commissioner of Commercial Taxes
Bangalore.

Sir,

SUB:- Petition of Copra Merchants of Tiptur -
Waiver of Purchase Tax.

With reference to the correspondence resting with your letter No.MSA/HC.1/71-72, dated 26-8-72 I am to state that it has been decided to waive 75% of the purchase tax due from the Copra Merchants of Tiptur for the period from 1-10-1957 to 30-9-1958 I am therefore to request you kindly to take further action in the matter accordingly.

Yoursfaithfully,

(Syed Karimullah Khadri)
Under Secretary to Government,
Finance Department.

No. FD 132 CSL 72

To

The Commr of Commercial Taxes
Bangalore

Sir,

Sub: Petition of cobra marchant of Tipplers - waiver of purchase tax

With reference to the correspondence resting with your letter no. RSA/HC-1/81-82 dt 26.8.72 ~~and the discussion that took place in the chambers of the F.M on 8.10.74~~. I am to state that it has been decided to waive 75% of the purchase tax for the cobra marchants of Tipplers due for the period from 1-10-57 to 30-9-58. I am therefore to request you kindly to take further action in the matter accordingly

Yours faithfully
Under Secretary to Govt
Commercial Taxes Department

FD 182 CSL 72(P.F)

6th Sept. 73

Finance Department.

The Commissioner of Commercial Taxes
in Mysore, Bangalore.

Sir,

SUB:-Waiver of 75 per cent of tax for the period from 1-10-1957 to 1-1-1959 - Petition from Copra Marchants of Tiptur.

I am directed to state that a meeting for discussing the subject noted above, is fixed in the Chambers of the Financial Commissioner at 4 P.M. on 12th September. I am to request you to make it convenient to attend the said meeting.

Yours faithfully,

(Syed Karimullah Khadri)
Under Secretary to Government,
Finance Department.

Issued

5/9/73

No. FD 132 (SL) 72 (P.F.)

To,

The C.C.T.

Sir,

Sub:- (as on page 11 c/f)
petition from copra merchants
of Tiptur.

I am directed to state that a meeting for discussing the subject noted above, is fixed in the chambers of the Financial Commissioner at 4 P.M. on 12th September. I am to request you to make it convinient to attend the said meeting.

Yf.
(S.F. Dt C.T)

No. MSA/HC-1/71-72.

Office of the Commissioner of
Commercial Taxes in Mysore,
Bangalore-1, dt. 26th August, 1972.

To

The Secretary to Government,
Finance Department, Bangalore-1.

Sub: Waiver of 75 per cent of tax for the period from 1-10-1957 to 1-1-1959.

Ref: Your letter No. FD 132 CSL 72, dated 12/16-5-1972.

The information on the points mentioned in your letter cited above is furnished below:-

(i) Did the dealers collect or not collect the tax from those to whom the commodities were sold, during this period?

Tax was not collected by these dealers from their buyers, in the sense the tax is not shown as a separate item in the bills issued by them. Since the tax is a tax at the purchase point, normally the dealers would include the tax in their sale price without exhibiting it separately. It is difficult to say whether these dealers have collected the tax that way, namely by including it in the sale price.

(ii) What is the position with regard to dealers other than those who have now made the representation? How general is the problem?

Dealers in cotton and groundnut from northern divisions filed representations and were given relief. Dealers in Arecanut from Mangalore filed representations but they were rejected. Similarly, dealers in copra and coconut from Tiptur filed representations which were also rejected. So far other dealers who may feel similarly placed have not filed representations. It is however difficult to estimate the extent of the problem as it is likely, once some relief is given to these dealers, others may start coming in.

(iii) Since the question of waiving a part of the levy arises for a period during which there was a lacuna in the law , which were the commodities which were subject to this lacuna? What is the amount of tax involved? If possible, details of the amounts and tax involved, dealer-wise should be ascertained.

....2,

The lacuna was that according to the High Court's decision, section 7 of the Act was defectively worded so that no tax at the point of purchase could be levied. All the goods in the third and the fourth schedules, which were liable to tax at the point of purchase during that period, were affected.

The goods in the third schedule then were:-

(1) Coconut and copra
(2) Tarwar, Tangadi, Kakke and other tanning barks, Alalekai (Mysobolan) Halmaddi, Antwala and Seagekai (Soapnut).
(3) Raw Tobacco whether cured or uncured.
(4) Raw wool.
(5) Chillies.
(6) Cardamom
(7) Arecanut
(8) Pepper.
(9) News Print
(10) Beedi leaves
(11) Cashew and its kernel
(12) Ores including manganese, iron Chromite and Kaolin ores.
(13) Bones and horns.

The goods in the Fourth schedule were all the declared goods, namely -

(1) Coal including coke in all its forms.
(2) Iron and steel.
(3) Hides and skins, whether ina raw or dressed state.
(4) Jute
(5) Oil seeds
(6) Cotton, ginned or unginned.
(7) Cotton yarn.

It is difficult to give the amount of tax involved as particulars of tax collected in respect of the above mentioned commodities is not available. If necessary, information may have to be called for from the assessing officers. But at this distance of time, it is doubtful whether the figures could be correctly culled out from the assessment records.

(iv) The assurance stated to have been given by the then Finance Minister that 75% of the tax would be waived has been cited. Was there such an assurance, and if so, was it within the scope of the law as it then existed?

The Mysore Sales Tax (Amendment) Bill, 1962, which included an amendment of section 7 of the Mysore Sales Tax Act, 1957 with retrospective effect, was referred to a select Committee. When the Committee, was considering the Bill, the Government gave an assurance that any cases of hardship on account of retrospective levy would be sympathetically considered and necessary relief given. The competency of the Government to waive any tax has not been accepted by the Accountant General. However, Government felt that they had 'refrain from collecting the tax levied. The Government have thus 'waived' the recovery of tax.

(v) Considering the fact that the period involved is about 12 years ago, what are the reasons for the time taken in arriving at the present decision to enforce the collection of the balance of 75% of the tax?

Though the tax involved related to a period about 12 years ago, there was controversy and stay orders about the levy and only after the retrospective amendment was made, tax could be recovered. Due to the assurance given, a general stay order was also issued in respect of 75% of the tax pending consideration of the applications. These dealers have been persistently submitting fresh representations, when the previous ones were rejected and thus got the stay orders continued. They filed writ petitions in the High Court and obtained stay orders from the Court. After the writ petitions were dismissed, Government vacated the stay orders and recovery action was started. Now they have again made this fresh representation and the recovery is stayed.

I am enclosing herewith a copy of a comprehensive note detailing the origin and the circumstances in which the Government's assurance for waiving 75% of tax was given. The note may be placed before the Finance Minister for his information.

Yours faithfully,

(D.J. Balaraj)
Commissioner of Commercial Taxes

COPY

NOTE REGARDING THE ORIGIN OF AND THE CIRCUMSTANCES IN WHICH THE GOVERNMENT'S ASSURANCE FOR WAIVING 75% OF TAX WAS ISSUED.

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Section 5(4) of the Mysore Sales Tax Act, 1957 when it was brought into force from 1.10.1957 dealing with the levy of tax on declared goods was as given below:-

(4) Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied in the case of the last purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate specified in the corresponding entry of column (3) of the said Schedule, on the dealer liable to tax under this Act, on his turnover of purchases in each year relating to such goods:

Provided that no tax shall be levied in respect of the last purchase inside the State, if the said goods are intended for sale in the course of inter-State trade or commerce.

Explanation - I - The expression "last purchase in the State" means the transaction in which a dealer registered under this Act -

(i), purchases from another such dealer declared goods for use by the purchaser in the manufacture of goods for sale or for use by the purchaser in the execution of any contract; or

(ii) purchases declared goods from another such dealer for sale to a dealer not registered under this Act or to a consumer in the State.

Explanation - II - The expression "declared goods means goods declared under section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), to be of special importance in inter-State trade or commerce.

This sub-section had been framed to be in accordance with the provisions of section 15 of the Central Sales Tax Act 1956. But, however, Section 15 of the Central Sales Tax Act was not brought into force till 1.10.1958.

Due to wrong understanding of the true import and scope of Section 5(4), the dealers of the Bombay Karnatak Area (Belgaum Division) who were dealing in groundnuts and cotton thought that they were not liable to pay the purchase tax under this section in respect of cotton and groundnut purchased by them from registered dealers and subsequently despatched to places outside the State on commission basis. It was said that this wrong understanding of the law was the result of some clarification said to have been issued by the Commissioner of Commercial Taxes during 1957.

.....2,

Unfortunately, the officers including the Deputy Commissioner of Commercial Taxes, Belgaum who was the appellate authority held the same view. Subsequently the Commissioner had to revise a number of assessment orders Suo-motu levying purchase tax on such purchases. The dealers began representing to the Government that the view taken by the Commissioner of Commercial Taxes for revising the assessments was not correct and that the dealers would be unnecessarily put to hardship if tax as per the Commissioner's orders was sought to be recovered. They had even filed revision petitions and writ petitions before the High Court for a clear decision on the point, namely, whether purchases of groundnut and cotton effected by registered dealers from other registered dealers and subsequently despatched to places outside the State on Commission basis would attract tax under section 5(4). This point was settled in favour of the Department upholding the Commissioner's view by the High Court in "Nathumal Gomaji-Vs-State of Mysore" (15 STC 29). In view of this authoritative decision on the point, the dealers had to pay the tax.

In the meanwhile unconnected with the developments leading to the decision in Nathumal Gomaji's case regarding the liability to tax on declared goods as mentioned above, a dealer in wool (which was in the third schedule and was taxable at the point of first purchase) challenged the levy of purchase tax on him on the ground that Section 7 of the Act did not permit such a levy. Section 7 as it stood during that period was as shown below:-

Liability to taxation under this Act of transactions - The tax under this Act shall be levied on any transaction of sale or purchase deemed to take place inside the State under this Act or any other law for the time being in force. The provisions of this Act relating to taxation on sales or purchases inside the State only at a single point or only at one or more stages apply only to the sales inside the State.

The words "apply only to the sales inside the State" at the end of the section were substituted by the words "apply to sales or purchases inside the State" by the Mysore Sales Tax (Third Amendment) Act, 1958 (Mysore Act 32 of 1958). This amendment came into force from 1.1.1959. As stated above, the dealer contended that Section 7 did not permit the levy of tax on purchases till 1.1.1959, when the amendment mentioned above was brought into force. The plea of the State was that this amendment was only of a clarificatory nature and could not be construed as not providing for the levy of a purchase tax, especially in view of the specific provisions in the charging sections 5(3) (b) and 5(4). But the High Court held that as the amendment of section 7 did not have retrospective effect no tax on purchases could be levied upto 1.1.1959. This decision is reported as "C. Mallarappa & Sons-Vs-The State in 13 STC 400". The effect of this decision was that upto 1.1.1959

1.1.1959 no tax under the Act could be levied on the goods mentioned in the third and the Fourth Schedules and consequently the taxes already recovered had to be refunded. The tax found leviable on groundnuts and cotton in accordance with the decision in Nathumal Gomaji's case referred to above could also not be enforced in view of the decision in Mallarappa's case. The State was thus faced with the problem of refunding huge amounts inspite of the fact that the clear intention of the legislature was to levy purchase tax as provided in Sections 5(3)(b) and section 5(4).

The High Court Government Pleader suggested to the Government that instead of preferring an appeal to the Supreme Court, which will take a long time for giving a decision and during which period the State Government will not be in a position to realise the purchase tax, the legislature may amend section 7 suitably with retrospective effect. The Government accepted this suggestion and in the Mysore Sales Tax (Amentdment) Bill 1962, Section 7 was proposed to be amended with retrospective effect. The Bill was referred to a Select Committee. Before the Committee the Chambers of Commerce and other interested parties appeared and strongly urged that the amendment should not be given retrospective operation. A lot of sympathy was aroused in the members by the lobby supporting the cause of the dealers in cotton and groundnut of Belgaum area. They argued that the dealers, rightly or wrongly, were mis-led into the belief that they would not be liable to pay purchase tax and the Mysore High Court's decision in Mallarappa's case had come to them as a God-send and the Legislature should not deprive them of the relief by approving the retrospective amendment. It was also urged that if it was not possible to modify the Bill, atleast a provision should be incorporated for granting exemption to those dealers. The High Court Government Pleader was requested to appear before the Committee and he explained th tax had been collected in a large number of cases and any di tinction between people who had made the payments and those who had not done would be a difference based on accidental circumstance. He said that a provision for exempting one class of dealers alone could not be made. It was at that time, against the background detailed above, that the Government gave an assurance that any cases of hardship on account of retrospective levy would be sympathetically considered and necessary relief provided. An extract of the clause relating to the amendment of section 7 and the report of the select Committee on the said clause are given below:-

2. Amendment of Section 7. - In section 7 of the Mysore Sales Tax Act, 1957 (Mysore Act 25 of 1957) (hereinafter referred to as the principal Act), for the second sentence, the following sentence shall be and shall always be deemed to have been substituted, namely:-

"The provisions of this Act relating to taxation on sales or purchases inside the State only at a single point or only at one or more stages apply to sales or purchases inside the State."

.....4,

6. Clause 2:- The Committee discussed the provisions of this clause in great detail. The representations of the Mysore Chamber of Commerce, Bangalore and the Karnataka Chamber of Commerce, Hubli, mainly related to the provisions of this clause.- It was urged by the representatives of the two chambers that businessmen had not made provisions for the payment of purchase tax to Government with reference to the period from 1st October 1957 to 1st January 1959 and to now require them to make this payment would be inequitable. The High Court Government Pleader who appeared before the Committee on behalf of the Advocate General stated that tax had been collected in a large number of cases and any distinction between people who had made the payments and those who had not done would be a difference based on accidental circumstances and could not form a proper basis for making any distinction. The Committee have carefully considered the several aspects of the question and have come to the conclusion that the clause may remain as it is. The Government have, however, assured the Committee that any cases of hardship brought to their notice would be considered sympathetically and that Government would exercise the powers available to them to treat such cases favourably. With this assurance the Committee approve of the clause as it is.

The Bill was accordingly passed giving retrospective effect to the amendment. Later on, after discussions with the Chamber of Commerce and other interested parties it was considered that relief upto 75% of the tax payable for the period between 1.10.1957 to 31.12.1958 should be given in the case of all those dealers to whom the retrospective liability was shown to have caused hardship as they had not provided for the payment. A report was submitted to the Government in this office Confidential letter No. LSA 3939/60-61 dated 21-22/12/1962 indicating the relief that may be granted. Government in their letter No. FD 269 CSL 62 dated 25.4.1963 conveyed their approval to the proposals sent. It was on the basis of these orders that relief was granted by waiving 75% of the tax in the case of dealers in groundnut and cotton, The benefit was availed of, naturally, by most of the dealers in Belgaum area and some dealers in Davangere also. The dealers in other areas did not have the grounds mentioned above for considering relief. Hence all their applications were rejected.

The dealers in Copra and coconut of Tumkur District and the deale s of arecanut of Mangalore had also requested for this relief. Their claims were rejected more than once. A few of them are still pressing their claims.

The declers of Tumkur District had even filed writ petitions against the orders of Government rejecting their claim. Since Coconut and Copra in which these dealers were dealing were considered as declared goods though they had not been included in the Fourth Schedule, it was considered that purchase tax could not be levied on them from 1.10.1958 consequent on the provisions of Section 15 of the Central Sales Tax Act 1956 coming into force from that date.

.....5,

Their claims for relief upto 1.10.1958 had earlier been negatived by the High Court in another batch of writ petitions as Section 15 of the Central Sales Tax Act was not in force during that period. Hence a memo was filed before the High Court to the effect that though Copra and Coconut was not in the Fourth Schedule, relief from payment of purchase tax would be given to them in respect of purchases of Copra and Coconut which was subsequently sold in the course of inter-State Trade for the period from 1.10.1958 to 31.12.1958. Except to this extent, the other contentions were all rejected by the High Court.

Since these dealers have been consistently and persistently been requesting for waiving the tax, and as copra and coconuts have been regularly included in the list of Declared goods, the same concession may be extended to them for the period from 1.10.1957 to 1.10.1958 also. The amount of tax to be waived in the case of merchants who have represented to Government will be about Rs.1,20,000/-.

Sd/-

(D.J. Balaraj)
Commissioner of Commercial Taxes.

COPY

COPY of the letter No. FD 132 CSL 72, dated 12th May 1972 from the Secretary to Government of Mysore, Finance Department, Vidhana Soudha, B'lore addressed to the Commissioner of Commercial Taxes in Mysore, Bangalore.

Sub: Waiver of 75 per cent of tax for the period from 1.10.1957 to 1.1.1959.

I am directed to forward herewith a copy of representation dated 2-5-1972 received from the Copra Merchants of Tiptur on the above subject and to state that in the light of discussions held, it has been decided that before considering, the following factual points should be ascertained:

i) Did the dealers collect or not collect the tax from those to whom the commodities were sold, during this period?

ii) What is the position with regard to dealers other than those who have now made the representation? How general is the problem?

iii) Since the question of waiving a part of the levy arises for a period during which there was a lacuna in the law, which were the commodities which were subject to this lacuna? What is the amount of tax involved? If possible, details of the amounts and tax involved, dealer-wise should be ascertained.

iv) The assurance stated to have been given by the then F.M. that 75% of the tax would be waived has been cited. Was there such an assurance, and if so, was it within the scope of the law as it then existed?

v) Considering the fact that the period involved is about 12 years ago, what are the reasons for the time taken in arrving at the present decision to enforce the collection of the balance of 75% of the tax?

I am, therefore, to request that the above information may please be sent very early. Meanwhile, the recovery of the balance of 75% of the Tax should not be enforced till the decision is taken by Government on the representation.

Yours faithfully,
Sd/-
(A.V. MIRZA.)
Under Secretary to Government,
Finance Department.

/ COPY /

COPY of the representation of the Copra Merchants, Tiptur, addressed to the Finance Minister, Government of Mysore, Bangalore.

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Reg: Waiver of 75% of tax for the period from 1.10.1957 to 1.1.1959.

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We beg to represent the following matter which has been pending since a long time.

From 1.10.1957 to 1.1.1959 according to the judgement of our High Court no purchase tax was leviable in respect of any commodity. Thereafter to overcome the effect of the said judgement retrospective amendment was introduced and the merchants made representation to the then Finance Minister, Shri B.D. Jatti who was pleased to issue an order to the effect that for the said period 25% of tax must be paid and the collection of 75% of the tax would be stayed and each case would be examined for the purpose of grant of relief. Accordingly the merchants paid 25 per cent of the tax and filed application for waiver of 75% of the tax.

In the Bombay-Karnatak area, in respect of all dealers without exception, who were made to purchase tax collections of 75% of the tax was waived. In our cases applications were pending. In the meantime according to the judgement of the Supreme Court Central Sales Tax became refundable. Because the State had to lose substantial revenue the decision was taken to the effect that in the pending cases 75% of the tax should not be waived, contrary to the assurance given to us. Now that the Central Sales Tax has become payable with retrospective effect, we request you to kindly reconsider earlier decisions and waive collection of the 75% of tax as has been done in the case of merchants of Bombay Karnatak area and avoid discrimination and render justice. Even the 25% we paid was out of our pockets without having collected the same from the customers. The payment made was under the bonafide hope that 75% of the tax would be waived.

In view of the great hardship that would be caused to the merchants if they have to pay the entire tax out of their pockets, we request you kindly to consider our representation favourably and render justice to us.

Thanking you Sir,

/ copy /

To

THE HONBLE MINISTER FOR FINANCE,
GOVERNMENT OF MYSORE,-
BANGALORE-1.

Sir,

Re: Waiver of 75 per cent of tax for the period from 1-10-57 to 1.1.1959.

.....

We beg to represent the following matter which has been pending since a long time.

From 1.10.1957 to 1.1.1959 according to the Judgment of our High Court, no purchase tax was leviable in respect of any commodity. Thereafter to overcome the effect of the said judgment, retrospective amendment was introduced and the merchants made representation to the then Finance Minister, Sri.B.D.Jatti, who was pleased to issue an order to the effect that for the said period 25% of the tax must be paid and the collection of 75" of the tax would be stayed and each case would be examined for the purpose of grant of relief. Accordingly the merchants paid 25% of the tax and filed application for waiver of 75% of the tax.

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contd. -2-

In view of the great hardship that would be caused to the merchants if they have to pay the entire tax out of their pockets, we request you kindly to consider our representation favourably and render justice to us.

Thanking you, Sir.

We beg to remain,

Yours faithfully,

S. P. Gargeshwarappa
President

Copra Merchants Association
Tiptur.

Si P. Gangadharappa

President

Sahakara Mahavidyalaya

Tiptur

To

THE HONBLE MINISTER FOR FINANCE,
GOVERNMENT OF MYSORE,
BANGALORE-1.

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contd. -2-

In view of the great hardship that would be caused to the merchants if they have to pay the entire tax out of their pockets, we request you kindly to consider our representation favourably and render justice to us.

Thanking you, Sir.

We beg to remain,

Yours faithfully,

S. Pigargelsmy

Copra Merchants,
Tiptur.